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RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic report of States parties due in 1998

Addendum

Chile*

[19 June 1998]

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* This document contains the eleventh, twelfth, thirteenth and fourteenth periodic reports (consolidated document) due on 19 November 1992, 1994, 1996 and 1998. For the ninth and tenth periodic reports of Chile and for the summary records of the meetings at which the Committee considered these reports, see documents CERD/C/196/Add.1, CERD/C/SR.948 and CERD/C/SR.951.

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## INTRODUCTION

1. In conformity with article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, each State party has undertaken to submit to the Secretary-General of the United Nations, for consideration by the Committee on the Elimination of Racial Discrimination, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention.

2. In conformity with this obligation, Chile has produced the present document which contains the eleventh periodic report, due on 19 November 1992, the twelfth report due on 19 November 1994, and the thirteenth report due on 20 November 1996. The most recent report submitted by Chile was dated 15 January 1992 and represented the ninth and tenth reports which had been due on 20 November 1988 and 20 November 1990 respectively.

3. In accordance with the guidelines established by the Committee (CERD/C/70/Rev.3), the present report is divided into two parts: the first part describes the general aspects of racial discrimination in Chile, the principal measures which the State has adopted during the period in question to remedy such discrimination and the existence of new migratory flows; and the second contains information relating to articles 2 to 7 of the Convention, their observance, relevant measures and other pertinent observations.

## FIRST PART

## I. GENERAL ASPECTS OF RACIAL DISCRIMINATION IN CHILE

### A. Historical background

4. The character of racial discrimination in Chile derives from the colonial relationship existing between the European Creole social sectors and the indigenous groups who were living in the national territory prior to the Hispanic conquest. 1/ Despite the equality before the law laid down in all the Constitutions of the Republic since the first half of the nineteenth century, historically the situation of these peoples has been one of imbalance, marginalization, segregation and discrimination, as in practically all the Latin American countries. 2/ Chileans are fully aware of the discrimination against these sectors of the population and, since 1990, the policy of the democratic Governments has been to attempt to progress along the long and difficult path towards overcoming this situation. During this period new laws have been enacted, development and advancement policies have been put into effect, and in particular a greater national awareness of these questions has been created, questions which historically tended to be swept under the carpet, passed over in silence or simply ignored by the majority of the population. Perhaps the most important development during the past seven years in Chile has been the fact that these questions have become part of national discourse and that the political measures are subjected to debate and scrutiny by public opinion. This report accordingly makes the obvious assumption that in Chile there has been a long historical relationship of discrimination vis-à-vis the indigenous populations and peoples 3/ living within the national territory, and also that within the executive branch there

exists the will to take important and sustained steps towards overcoming these situations. In the report the assumption is also made that it is impossible in a short period of time to overcome the profound inequalities which have established themselves over hundreds of years of history. This means that the policies aimed at combating discrimination against the indigenous populations must be of a long-term nature, in other words they must be permanent and constant. The legislation enacted during the period covered by this report has this objective.

5. The national census of 1992 established that almost 1 million persons over the age of 14 belonged to a traditional ethnic group. This means that 1.2 million people, or approximately 8 per cent of the total population, form part or are descendants of Chile's first peoples. The principal indigenous populations are the Mapuches, who lived in the south but are at present scattered throughout the country, the Aymaras who live in the north, the Rapa Nui or Easter Islanders who live on Easter Island in the Pacific Ocean, and smaller groups such as the Atacameños in the Atacama desert, the Collas in the Copiapó cordillera, and the descendants of the hunting, fishing and canoeing groups of the far south, the Kawashkars or Alacalufes, the Yámanis or Yaganes and the Onas or the Selknam, the latter groups having practically disappeared. The Mapuches are the majority group. The Spaniards traditionally called them the "Araucanians" or inhabitants of the provinces of Arauco or the territory of "Araucanía". 4/ There are different Mapuche subgroups in different parts of the country. The best known are the "Pehuenches", or people of the cordillera, where the tree known in the Mapuche language as "pehuén" and in Spanish as "araucaria" (Pino Araucaria) grows. In 1990, the tree was declared a "national monument" by the Government, and felling and industrial use of the tree were prohibited since it is endangered and represents one of the best-known and distinctive species of southern Chile. The "Huilliches", or people of the south, live in the provinces of Valdivia, Osorno and even Chiloé; they possess specific characteristics and customs which in certain respects differentiate them from the other Mapuches. 5/

6. During the sixteenth century, before the arrival of the Spaniards, the indigenous population occupied the whole of the territory of modern Chile, and the Mapuches constituted an absolute majority. Modern studies refer to a population of approximately 1 million. The Spanish conquest divided the country at the River Bío Bío, which is situated almost 600 kilometres south of the capital, Santiago. To the north, in other words in the central region of the country, the large estates were established and gradually absorbed the indigenous population. By the middle of the nineteenth century there were practically no independent Indian peoples to the north of the Bío Bío. Cross-breeding between the Spanish and indigenous populations was widespread. For this reason, the Chilean population has an awareness of "racial and ethnic homogeneity" since, both in the countryside and in the towns in the centre of the country, cross-breeding was the general rule. The Chilean grass roots and middle classes are mestizo in origin, which gives Chileans a special personality and physical character. On the other hand, in the territory to the south of the Bío Bío, the Mapuche population remained independent until 1883. During the sixteenth and seventeenth centuries, there were a number of clashes and not infrequently the indigenous inhabitants defeated the Spanish armies. At the beginning of the seventeenth century, a great

Araucanian or Mapuche rebellion destroyed all the towns founded by the Spaniards, and resulted in the death of the Governor of Chile and the expulsion of the Europeans to the north of the Bío Bío for three centuries. Following these events, diplomatic relations began between the indigenous inhabitants and the Spaniards in the form of "parleys". Later, in the eighteenth century, commercial relations developed considerably in the frontier region; they were known as "frontier relations" between the indigenous inhabitants and the Spanish Creoles. At the end of the colonial period and during the first decades of the Republic, a complex frontier system existed between the "Chilean" side and the "indigenous" side of the frontier. 6/

7. Towards the end of the nineteenth century the State ordered the "pacification of Araucanía", setting up forts and towns and "settling" the indigenous inhabitants on "reservations", as was the practice and policy of the times in many parts of the world. Some 130,000 indigenous inhabitants were placed under the settlement regime in the first decades of the twentieth century. The State transferred land to the communities and sold the rest of the territory to Chilean and foreign settlers. Thousands of German, Swiss, Italian, Dutch and Spanish settlers travelled to Chile to settle on the lands of Araucanía, where their descendants live to this day. This coexistence has been peaceful for most of the time, but with occasional friction and conflict.

8. Numerous laws relating to indigenous affairs were enacted in the course of this long period when the territory of Araucanía and the south of Chile was constituted. These laws regulate land ownership and the method of acquiring land and distributing it both to the indigenous inhabitants and to settlers. The State adopted a protectionist attitude to the indigenous inhabitants and a development-oriented approach to foreign settlers. At the time, the massive influx of European settlers was expected to bring about substantial development of these southern lands. However, the laws were not always fully obeyed in these remote communities, where State authority was non-existent and people frequently took justice into their own hands. The term "Far South" has been coined to denote the area and the events which occurred during the settlement of the south of Latin America. Situations which first arose at the end of the last century and the beginning of the present century often still exist today and give rise to intractable conflicts. These conflicts between settlers and indigenous inhabitants date back several generations, and all the parties concerned today claim their legal rights and the legitimacy of their cases. The Indigenous Act promulgated by President Aylwin in 1993 was aimed at seeking ways of solving conflicts which have been dragging on for almost 100 years.

9. In about 1930, Mapuches began to migrate to the cities and in particular the capital, Santiago. As the size of families grew, land grew scarce and migration began; it has in fact continued without interruption until the present day.

10. Historically speaking, the Chilean population was largely formed through cross-breeding between members of various ethnic origins or groups, the main characteristic being cross-breeding between Spaniards and indigenous inhabitants. Because of Chile's economic circumstances, the non-existence

of large plantations or factories producing goods for export, possibly the climate and other factors, African immigration was very limited and during the past century the few African immigrants were absorbed in the general miscegenation. Also during the past century, German, Italian, Yugoslav and Spanish immigrants had little difficulty in integrating within the population as a whole, and especially the middle classes; in some cases they were warmly welcomed by Chilean Creole society. Palestinian, Syrian, Lebanese and other Arab immigrants began to arrive at the beginning of this century; although they were subjected to discrimination at certain times, they have integrated smoothly within the population. 7/ Much the same may be said about Jewish and Israeli immigration during the twentieth century. 8/

11. A recent phenomenon has been immigration from Asia; this flow has not been very large but it has increased considerably during the past 10 years. For this reason, this report will briefly review the question of the Korean immigrant community and its experience of racial discrimination.

12. In addition, the country's economic development has been attracting migration mainly of a socio-economic character from the neighbouring countries to the north, and particularly Peru. The fact that these immigrants are considered to be of lowly origin, mestizo or wholly indigenous often gives rise to situations of discrimination which will also be briefly reviewed in this report.

13. During the period covered by this report, the Government has promulgated Act No. 19,253 (of 1993) relating to the Protection, Advancement and Development of the Indigenous Inhabitants of Chile, or the Indigenous Act, which constitutes the main instrument established by the State for the purpose of the comprehensive development of this sector of the population and avoiding any form of discrimination against it. This Act set up the Indigenous Development Corporation (CONADI), which is a participatory institution responsible for the implementation of State policies in this sector. It should be emphasized that the senior executives of this Corporation are indigenous and that it has an elected board about half of whose members are indigenous. Their leaders have been elected by universal suffrage in elections held in the communities of the various ethnic groups throughout the country.

14. Also during this period the national population and housing census was carried out in 1992, and for the first time in a Chilean census a specific question was asked about indigenous ethnic origin. The census reflected the emergence of a phenomenon which had not been publicly recognized earlier: the existence of almost half a million indigenous persons in the capital, Santiago.

15. CONADI, which was set up by the Indigenous Act, has during the past four years developed numerous programmes in support of indigenous communities and persons. In this report we shall briefly describe some of these programmes, many of which represent "affirmative action" policies designed to reverse the historical situation of discrimination. The acquisition of land by the State for transfer to the indigenous communities is also described in this report, and in particular the Quinquén lands, which were transferred after a long

dispute to the Pehuenche Mapuches of Lonquimay, and the lands recently transferred by the Ministry of National Resources to the Huilliche Mapuches of San Juan de la Costa and coastal land in the Province of Arauco.

16. The Government of Chile has invited the United Nations Centre for Human Rights to hold two international expert workshops on indigenous questions in Santiago. The first was held at the same time as the Earth Summit in Rio de Janeiro in 1991 and brought together indigenous experts, delegates from organizations, and international experts on the subject of indigenous peoples and the environment. It was attended by numerous delegations of indigenous Chileans, and for the first time at an international meeting there was simultaneous interpretation into the Mapuche language as well as English, Spanish and French. In 1997, the Centre for Human Rights, in conformity with a resolution of the General Assembly and an invitation by the Government of Chile, held a workshop in Santiago on the possible establishment of a permanent forum for indigenous people in the United Nations system. It was attended by experts from the Organization, Mrs. Erica-Irene Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations, delegates representing indigenous peoples on all continents and numerous Latin American indigenous representatives. The decisions of this workshop were submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-ninth session.

## B. Overall trends in racial discrimination in Chile

17. A number of studies carried out by public, private and university bodies have drawn attention to the existence of various forms of racial discrimination within Chilean society. These matters had not been highlighted prior to the re-establishment of the democratic system of government at the beginning of the 1990s, priority simply being given to the existence of enactments which do not discriminate between the various inhabitants of the country, whether they be Chilean citizens or foreigners.

### 1. Intolerance and discrimination

18. The Department of Sociology in the University of Chile, at the request of the Fundación Ideas, carried out in October 1996 a study on intolerance and discrimination in Chilean society, which may be regarded as providing sound guidance on the question dealt with by this report. 9/ The study concludes that "a fifth of the population have xenophobic prejudices". For example, when confronted with the proposition that Indians are lazy (one of the most widespread stereotypes in Chile), about 26.1 per cent agreed while 71 per cent disagreed. Of the latter number, approximately 53 per cent sharply or totally disagreed, which is a very large figure and indicates the change which is occurring in Chilean society in the 1990s, namely the rejection of discrimination.

19. The percentage of prejudice nevertheless recurs in several other questions relating to ideas about persons belonging to indigenous groups or coloured persons. Approximately 13.1 per cent of respondents considered that there was a relationship between development or lack of development and "coloured people". 10/ Nevertheless, a broad majority of the population hold

increasingly tolerant and respectful views and refuse to be taken aback by questions which, although referring to very well-known stereotypes, are deeply racist in character.

### 2. Changes in indigenous names

20. Despite this growing appreciation of ethic values, discrimination remains and the indigenous inhabitants are conscious of it. An objective indicator which will place this statement in perspective is the practice of replacing a Mapuche name by a Spanish name. According to a recent study, 11/ "out of a total of 31,597 applications for changes of name filed in Chile between 1970 and 1990, 2,056 (6.5 per cent) concerned Mapuche subjects. Beyond its quantitative relevance, this identification process provides significant information since, from a Mapuche perspective, 12/ this is an expression of distress. The change of name is regarded as a break with one's ethnic roots, as a loss of identity, all as a result of racial discrimination". 13/ About 47 per cent of applications are made by Mapuche men and about 46 per cent by Mapuche women. It should be noted that 47 per cent of applications are made in Santiago, but approximately 36 per cent are made in the Araucanía region, where there is a very large Mapuche population. All these name changes reflect a variety of situations but approximately 50 per cent of persons requesting a change express a desire to reject their Mapuche name in favour of a Spanish name.

21. As in many other countries, there is a procedure in Chile for changes of name which must be initiated before a judge. Until less than 10 years ago, large numbers of people would go to the register office to change their indigenous name to a non-indigenous name or to "disindigenize" their name by changing its spelling. In the past six years, although reliable statistics are not available, there has been a decline in the number of such applications, which would appear to coincide, inter alia, with public policies directly benefiting persons with indigenous names and belonging to these ethnic groups. 14/

### 3. Ethnic re-evaluation

22. It should be pointed out that in this area there is no ideal society in which tolerance is perfect and prejudice does not exist. In Chilean society during the past few years, prejudice against the indigenous populations 15/ has been declining, basically because of: (a) the activity of the indigenous organization; (b) increasing recognition by the State through legislation, granting of benefits and recognition of rights; (c) a general atmosphere throughout Latin America of greater appreciation of indigenous groups, their past, their values and their cultures by the non-indigenous populations as a whole.

23. Like other Latin American countries, Chile has seen the emergence of the ethnic phenomenon understood as an enrichment of society through greater cultural diversity. The two democratic Presidents of the Republic have in their speeches publicly praised the contribution which the indigenous populations make to the country's diversity. Today a return to the old, openly discriminatory public political discourse would appear very difficult,

since the need to assess and respect the ethnic features of the Chilean population has been established within the country's political agenda.

## II. PRINCIPAL MEASURES ADOPTED BY THE STATE TO SOLVE PROBLEMS OF RACIAL DISCRIMINATION

### A. The national census of 1992

24. The national census 16/ carried out in Chile in 1992 included a study of the country's indigenous populations. Two mechanisms were used to establish the indigenous population and its inherent characteristics. First, among the various terms categorizing the "basic populated entities" of the census, the entity known as an "indigenous community" was established. 17/ This was defined by the local administrative authority and by the interviewer visually or by means of questions and denoted a homogeneous area inhabited by indigenous persons. It is an "objective" definition in that it differentiates a community from other entities such as villages, hamlets, plots of land, farms and other types of spatial and social organization. The second source of knowledge derives from the question put to persons over the age of 14 about their "self-assignment" as members of one of the "country's indigenous cultures". A choice had to be made between the Mapuche, Aymara and Rapa Nui cultures. 18/ We could term this the "subjective" source for knowledge of the indigenous populations since it is exclusively dependent on the individual's definition of himself, on his identification as a member or descendant of one of the three indigenous groups referred to. This system was established since it avoids any type of racial discrimination: it is the individual himself who freely and voluntarily establishes his or her identity.

25. The territorial or "objective" definition established by the census is highly appropriate for the study of rural and homogenous indigenous populations. On the other hand, the "subjective" definition enables the indigenous inhabitants to identify themselves without reference to the place where they live. The census has had a particularly strong impact in producing a substantial, and hence very significant, figure for the indigenous population (largely Mapuche) in the cities.

26. In 1992 in Chile, 998,385 persons over the age of 14 stated that they belonged to one of the "indigenous cultures" in question. It should be pointed out that the indigenous organizations, the Ad Hoc Commission on Indigenous Peoples and the National Institute of Statistics (INE) carried out a campaign to clarify the meaning and importance of the question, calling on the indigenous population to specify the culture to which they belonged. It is no less correct and necessary to point out that the year of the census was 1992, the five hundredth anniversary of the landing of Christopher Columbus in the Americas, and consequently the whole indigenous and ethnic question was given prominence in Chile. In these circumstances, the census question was asked in a very appropriate context and elicited information that had been hitherto unknown. 19/

Population aged 14 or over who stated that they belong to an ethnic group, 1992

| | COUNTRY | MAPUCHES | AYMARAS | RAPA NUIS |
|---|---|---|---|---|
| Total | 998 385 | 928 060 | 48 477 | 21 848 |
| Males | 504 986 | 470 730 | 24 898 | 9 358 |
| Females | 493 399 | 457 330 | 23 579 | 12 490 |

Source: Population and housing census, Chile, 1992.

27. Thus, of the 13,348,401 persons living in Chile in 1992, 998,385, or 7.4 per cent, identified themselves as indigenous.

28. The Mapuche population living in indigenous communities and localities in the south of the country numbers 234,541. This is the largest indigenous group which maintains its traditions, customs and language, and its own religion, ceremonies and dress.

29. The census figures also show that it is one of the poorest populations in Chile. They are small farmers and combine subsistence farming with paid work in farming and forestry. 20/

## B. The new Indigenous Act of 1993

30. The principal policy measure taken to combat racial discrimination in Chile during the period covered by this report was the enactment of the Indigenous Act (No. 19,253), which has been in force since 5 October 1993 and establishes provisions relating to the protection, advancement and development of indigenous persons.

31. During the political campaign of 1989 prior to the election of the first democratic Government in Chile, the candidate for the political coalition known as the "Concertación de Partidos por la Democracia", Mr. Patricio Aylwin Azócar, undertook in the town of Nueva Imperial, before all the indigenous organizations, to prepare new legislation which would benefit Chile's indigenous population. Once elected and having taken office, President Aylwin set up, with the participation of all the indigenous ethnic groups, the Ad Hoc Commission on Indigenous Peoples, whose chief task was to prepare new legislation in this area. In 1990 and 1991 numerous indigenous congresses were held to discuss a preliminary draft, which was solemnly handed to President Aylwin in the city of Temuco in the Araucanía Region. After studying and amending this draft, the Executive sent it to the National Congress, which adopted it in 1993. President Aylwin promulgated the Indigenous Act in the same town of Nueva Imperial where he had given his undertaking.

32. The main features of this new law are listed below:

(a) Recognition of Chile's indigenous cultures, their original character, their communities, their languages, their traditions in the area of

justice and other questions. Article 1 reads: "The State recognizes that Chile's indigenous inhabitants are the descendants of the human groups which have existed on the national territory since pre-Colombian times and which conserve their own ethnic manifestations, the land being for them the principal foundation of their existence and their culture." After listing the principal "indigenous ethnic groups", it goes on to say that "the State values their existence as an essential part of the roots of the Chilean nation, and also their integrity and development, in accordance with their customs and values".

(b) Obligation of the State to "respect, protect and promote" the development of the indigenous inhabitants both as human groups and as individuals. Article 1 of the Act further stipulates: "It is the duty of society in general and of the State in particular, through its institutions, to respect, protect and promote the development of the indigenous inhabitants and their cultures, families and communities, adopting appropriate measures for these purposes, and to protect indigenous lands, ensure their appropriate exploitation and their ecological equilibrium, and promote their expansion." The 1993 legislation constitutes a radical change of tack in the State's policies regarding the indigenous populations since it establishes their right to engage in a form of development that is different from that of the rest of the country and the State undertakes to implement development policies "in accordance with their customs and values". 21/

(c) Protection of indigenous lands by preventing their acquisition on any pretext by non-indigenous persons. Article 13 of the Act stipulates: "The (indigenous) lands shall, since the national interest so requires, enjoy the protection of this Act and may not be transferred, seized, encumbered or acquired through prescription, save between indigenous communities or persons of the same ethnic group." This legislation is among the most protective of indigenous resources that has ever existed in Chile. As is well known, the greatest act of discrimination in the history of relations between indigenous and non-indigenous inhabitants was the process of expropriation and loss of the lands of the indigenous communities.

(d) Establishment of an Indigenous Lands and Waters Fund, whose purpose is the purchase by the State of land which will restore or extend the land currently owned by indigenous inhabitants. It is also intended to regularize, restore and purchase water rights in cases where the indigenous inhabitants have lost them, particularly in the case of the Aymara and Atacameño communities in the north of Chile. These are generally located in oases in the desert or very arid land.

(e) Establishment of an Indigenous Development Fund designed to transfer resources to the communities for their economic self-development, technical training and other purposes necessary in view of the state of poverty in which they generally live.

(f) Recognition of the indigenous cultures and languages, and establishment of a "bilingual cross-cultural education system" in Chile. Article 32 states: "The Corporation, in areas of high indigenous density and in conjunction with the competent services or agencies of the State, shall develop a bilingual cross-cultural education system in order to enable

indigenous pupils to develop in an appropriate manner both in their society of origin and in society as a whole." It should be noted that this is the first time that a law provides for such a far-reaching change in Chilean education.

(g) Establishment of the principle of participation in all matters relating to indigenous questions. Article 34 of the Act stipulates: "The State's administrative services and the territorial organizations, when dealing with matters which impinge on or relate to indigenous questions, shall hear and consider the opinion of the indigenous organizations recognized by this Act." This article constitutes a general anti-discriminatory principle in the formulation and execution of public policies oriented towards the indigenous peoples.

(h) Establishment of a judicial system appropriate for the indigenous communities comprising: (i) recognition of custom as a means of proof; 22/ (ii) recognition of the indigenous languages in judicial proceedings and provision for the appointment of interpreters; 23/ (iii) establishment of the system of legal conciliation between the parties, which enables many conflicts to be resolved, especially concerning land, in accordance with the customary criterion used by the community; 24/ (iv) establishment of a more streamlined and rapid procedure than the usual procedure in Chile. 25/

(i) Establishment of the National Indigenous Development Corporation (CONADI), financed from the national budget and headed by a National Council, half of whose members are elected by the indigenous communities, and also comprising councillors representing public organizations and three councillors designated by the President of the Republic. The Corporation has a department in the north of the country responsible for the Aymara and Atacameño peoples and a department in the south responsible for the Mapuche people. It has offices in the large cities where indigenous communities exist. A substantial number of its leaders and officials are qualified indigenous persons.

## C. The National Indigenous Development Corporation

33. The National Indigenous Development Corporation was set up following the promulgation of the Indigenous Act in late 1993 and began full operations in 1994.

### 1. Indigenous participation

34. Indigenous participation has taken various forms. The first is participation by "indigenous councillors" in the CONADI National Council. In January 1994, the indigenous councillors whose names appeared on lists drawn up by the indigenous organizations were appointed by the President of the Republic on a one-time basis and for a period of one year, as temporarily provided for by the Indigenous Act. The following year, the councillors were elected directly by the indigenous communities legally registered under the new Act. Indigenous participation has also taken the form of the legal establishment of indigenous communities and indigenous associations. To date, 2,340 indigenous communities and 340 indigenous associations have been legally established. In addition, indigenous organizations are taking part in the design and implementation of local development plans.

## 2. Land purchase and transfer to the indigenous communities

35. As of 1990, the State's policy has been to protect indigenous lands and, as of 1994, to purchase new land. It is thus dealing with one of the most difficult aspects of the relationship between indigenous peoples and Chilean society, in which specific manifestations of discrimination against indigenous peoples have occurred.

### Quinquén

36. During this period, one of the biggest indigenous land disputes took place in the Andes between the Pehuenche indigenous communities in Quinquén and the logging companies that wanted to cut down Araucaria pines, which are sacred trees for the indigenous peoples and of great commercial value for the companies. The dispute ended when the 30,000 hectares of land were purchased by the State for US$ 6.5 million. The ownership titles were transferred to the indigenous peoples in 1997 and another 18,000 hectares suitable for forestry and livestock are in the process of being transferred to the Andean communities.

### Land Fund

37. Between 1994 and 1997, 15,937.67 hectares were purchased for Mapuche communities in the south of the country using the Land Fund established by the Indigenous Act. Most of this land was former indigenous land which had passed into the hands of non-indigenous owners and has been returned to the communities. Some of the plots were purchased by indigenous farmers who had received subsidies.

38. The State has given ownership titles to indigenous communities and individuals. Particular reference may be made to the case of the Cúncuma dunes near the town of Tirúa in the Province of Arauco, which the indigenous communities had been wanting to purchase for a long time. Forestry and tourism programmes run by the communities themselves have been set up there.

39. The Indigenous Land Fund has recently had to intervene in disputes between logging companies and indigenous communities over land claimed for many generations. The Land Fund purchases land and transfers ownership to the communities.

40. In recent years, the State has made available a budget of US$ 10 million per year for the purchase of land, the funds coming from the national budget.

### Transfer of State-owned land

41. In accordance with the provisions of the Indigenous Act, nearly 28,000 hectares were transferred to the Huilliche communities in San Juan de la Costa during this period. In 1997, public land was transferred to coastal communities in the Eighth Region, making a total of over 30,000 hectares transferred up to that year. The land, which belonged to the State, was in many cases inhabited by indigenous communities who had no ownership titles. In other cases, it was not inhabited at all and, in this

way, the amount of indigenous land actually increased. Land titles are usually in the communities' names or, as appropriate, in the name of a head of household, whether a man or a woman.

Water rights

42. The greatest problem faced by the indigenous communities in the north of the country is and has been water. The Aymara and Atacameño communities live in a desert area and practise oasis agriculture. The country's Water Act has meant that many of the communities' water rights have been lost as a result of competition by mining companies, which also need water for their activities. In the three years that the Indigenous Act has been in force, over 8,000 litres of water per second have been purchased or regularized. This is a very important guarantee for the life and development of these communities who live in oases or on the Andean Altiplano.

### 3. Indigenous disputes, evictions and discrimination

43. In accordance with its mandate under the Indigenous Act, CONADI has defended indigenous interests in various disputes between the communities and infrastructure projects, such as the construction of a hydroelectric dam by a private company. CONADI gives the communities legal assistance and approves the relocation plan for the displaced population. In this connection, the CONADI National Council, which is composed of government and indigenous representatives, approves land exchanges requested by indigenous communities for the purpose of the construction of infrastructure affecting indigenous land.

## D. Public policies in respect of Chilean indigenous groups

### 1. Indigenous scholarship policy

44. Scholarship programmes for young indigenous persons were started in 1991 by the Ad Hoc Commission on Indigenous Peoples and the Ministry of Education. In 1991, 300 scholarships were awarded to young indigenous persons for advanced studies. The figure rose to 750 scholarships in 1992, 900 in 1993 and 940 in 1994 and 1995. Each student receives support to study in a vocational or technical institute or university. There is a programme for primary and secondary school pupils. A total of 2,446 scholarships of this kind were awarded in 1995 in the Ninth Region of Araucanía, where 68 per cent of the beneficiaries' parents are indigenous peasants. 26/ Because their homes are so far away, about 47 per cent of the students are boarders during the school year. "In 1994, students with scholarships accounted for 16.22 per cent of total potential Mapuche beneficiaries; in 1995, the figure was 15.33 per cent." 27/

### 2. Cross-cultural bilingual education

45. The cross-cultural bilingual education programme began in 1994. In 1991 and 1992, the Commission on Indigenous Peoples had promoted the training of bilingual teachers in the north (Aymaras) and south (Mapuches) of the country.

The programme began in primary schools in rural areas with a very high proportion of indigenous inhabitants, and some experimental programmes have even been started in urban areas.

### 3. Development programmes

46. The indigenous population group is one of the poorest in the country. 28/ Many development programmes have been carried out for family dwellings and at the local level. Traditional water supplies from rivers, streams and wells have been greatly disrupted by logging activity, pollution and problems linked to population growth. Communes with the greatest density of indigenous communities in the south of the country have a very large "water supply" deficit. From 1990 to 1993, 4,750 indigenous dwellings were connected to a water supply for the first time by means of wells, pumps or systems of tanks and pipes. 29/ Evaluation of these programmes shows how important this resource is for families, and for indigenous women in particular. 30/

### 4. Indigenous nursery schools

47. In 1992, the National Nursery Schools Board began building and setting up nursery schools for indigenous children, thereby creating an appropriate cultural environment, guaranteeing the active participation of indigenous families and mothers, and providing proper food and health care for the children. These nursery schools are located in the communities themselves and have been a key factor in community unity, participation and ethnic re-identification. They are usually located in very isolated communities. In 1992, the Ukika nursery schools were established for the Yámani community in Puerto Edén; the Champulli school for a Mapuche community; the Caspana, Chiu Chiu, Lasana and Camar schools for the Atacameño peoples; the Hanga Roa schools in Rapa Nui, Easter Island; the Anchiqueumo and Pualhue schools for the Huilliche community; and the Camiña and Moquella schools for Aymara communities. In 1993, the Ticnamar nursery school was established for the Aymaras and the Callaqui school, for the Pehuenches. In the last few years, 12 more nursery schools have been established for indigenous communities. 31/

## III. NEW MIGRATORY FLOWS

48. The globalization and internationalization of societies have led to an increase in migratory flows in all parts of the world, and the phenomenon has begun to occur in Chile in the last few years. In 1996, residence and work permits were granted to more than 53,000 foreigners. 32/ This is the highest figure in recent years and is larger than immigration figures in the last century, when Chile promoted a European immigration policy. The composition of the migratory flow is very varied, with the largest numbers coming from neighbouring countries, particularly Peru. 33/

49. Chile welcomes immigrants, provided that the persons concerned, whose documentation must be in order, can show that they have been employed for a particular job. The Government does not have preferences and does not discriminate in any way as far as the immigrants' origins are concerned. This report refers to the situation of two relatively large recent immigrant groups.

## A. Korean immigration

50. Economic immigration by people from the Republic of Korea has increased as a result of Chile's orientation towards the Pacific and the growth of business and trade.

### (a) Origin and characteristics of Korean immigration

51. The flow of Korean immigrants began in the late 1970s. In 1980, Chile and the Republic of Korea signed an agreement by which Koreans coming to Chile were exempted from the visa requirement. This agreement spurred immigration, although it lapsed some years later. As Korean families arrived in Chile in the 1980s, many of them also went home or emigrated again to other countries. It may be said that a small resident Korean community began taking shape In the 1990s. 34/ The Koreans say that, if a family has been in the country for over five years, it is because it has decided to stay for good. According to a recent report by resident Koreans, 350 families made up of about 1,500 persons, including embassy staff, now live in Chile on a permanent basis.

52. According to the resident Koreans, the reasons for migration are population growth and its consequences, including fierce competition for education and jobs. Other reasons include overwork and the high cost, in terms of quality of life, of getting ahead economically; to a lesser extent, reference was made to political and ideological repression, the problems involved in obtaining certain jobs, the spectre of war and the desire for adventure.

53. Korean immigrants include small businessmen who have mainly set up garment manufacturing companies. The first immigrants went into the textile trade and textile manufacturing. Small Korean businessmen bought used or low-cost machinery in the Republic of Korea and imported it into Chile under various duty-free schemes. Over time, when textile markets were liberalized and Asian countries began manufacturing on a large scale and at low cost, the Koreans moved out of textile manufacturing and began importing Asian textiles and selling them in Chile.

54. Immigration has stopped now that the new immigration policies require more investment capital than many candidates can muster. There is also competition by other Latin American countries which impose fewer requirements on immigrants. According to the study by the Korean community, no Korean immigrants come to Chile to work as labourers. It indicates that Korean workers choose developed countries such as the United States and Australia.

### 2. Nature of Korean immigration

55. Korean immigration may be defined as legal, long-term and taking place on a group basis, both directly and in stages. It is also selective (there are predominant age, education and socio-economic variables); the persons concerned have skills and capital, and migrate voluntarily in search of better working conditions and living standards in socio-economic and socio-cultural terms than in their country of origin. The place to which they choose to migrate has been decided rationally and evaluated on a cost-benefit basis. It

is typical labour migration involving the transfer of investment capital which they themselves have built up and success in their work in no way depends on labour market demand.

56. Many immigrants have qualifications that they usually do not use; there are architects, chemists, builders, commercial engineers, acupuncturists, etc., but most of the immigrants are in business.

### 3. Integration and non-integration

57. The first generation of Korean immigrants have their own businesses and companies, and this greatly reduces the possibilities of exposure to discrimination. Their social interaction is limited primarily to employer-employee and/or customer relations. Their closest, most regular and most lengthy contacts with Chileans are with their employees. The great majority of the Chilean employees are from lower middle-class sectors. The impressions that first-generation Korean immigrants have of Chileans are based almost exclusively on the impressions they form of the values, principles and attitudes they observe in their dealings with these sectors. These relationships and the close-knit nature of the Korean community have created many stereotypes of Chileans based almost exclusively on the Koreans' experience with their employees.

58. Members of the first generation did not study Spanish because they began working immediately on arrival and this made integration very difficult. In addition, language studies are not offered to immigrants, unlike in many other countries where immigration is encouraged. Korean families attach great importance to education. Nearly all the children study in private schools and many go to university. The generation of young Koreans who were born in Korea and arrived in Chile as children often stopped studying in order to help their parents in business and industry. The generation born in Chile is the best adjusted and integrated and, because of their age, practically all of them attend school.

### 4. Aspects of discrimination

59. The relationship between the Korean population and the Chilean population is not one of discrimination; the trend is, rather, towards integration. There are, however, some points that should be mentioned in terms of the Koreans' perception of discrimination by Chileans and with regard to objective matters, especially the language used by the press.

60. A study carried out with the Korean community states that there is a feeling of being discriminated against by the Chilean upper class, the "upper strata". Private sports clubs, for example, are perceived as being very closed, although it is recognized that they are closed even to certain Chileans. "It is the upper class that discriminates, not the middle class or the lower class." Some immigrants say that they have had problems renting houses and that they encounter problems renting apartments in some buildings. They also say that, when there is a traffic problem or a car problem, they have the feeling that the police take the side of the Chilean. The second generation feel less discriminated against than the first.

61. An article in the press a few years ago had the headline "Oriental invasion" (El Mercurio, 15 May 1986). Questions were asked about the contribution Koreans could make to the country. It was hinted that they tended to be involved in shady deals, paying wages under the table, non-payment of taxes, etc. In reply (El Mercurio, 25 May 1986), a Korean lawyer asked the signatory of the above-mentioned article whether he would be prepared to face libel proceedings if it was proved that what he said was a flagrant distortion of the truth. A third person became involved in the dispute by asking "How can an immigrant dare threaten a Chilean in his own country with proceedings for libel?" (El Mercurio, 31 May 1986).

62. In El Mercurio of 26 November 1990, an Aliens Department official said that some Koreans "are major industrialists who have invested and made a big contribution to the country, but others are small tradesmen who have a family approach to work and do not contribute anything from the labour or technology point of view".

### 5. Discrimination trial

63. One of the first trials relating to racial discrimination took place in Chile in 1993. A Korean woman immigrant was prevented from joining the Günther Mund Health and Recreation Centre on the grounds that her eating habits caused bad smells in the saunas and bothered other members. The Korean woman took her case to the courts, which found in her favour and against the owner of the establishment in a much publicized case closely followed by public opinion and ordered him to pay substantial compensation for having caused the Korean woman "mental anguish". She received the money and donated it to various charitable organizations. According to the ruling, "The court upholds the judgement in first instance sentencing a health and recreation centre to pay a fine for having unjustifiably denied service to a Korean customer, and hereby increases the fine." The Supreme Court judgement states: "The fact of preventing a person or group of persons from entering any public place, whether free of charge or for payment, on grounds of race, sex, language, religion or any other ethnic, social or cultural condition constitutes unequal treatment and discrimination in breach of the modern-day human rights principles provided for in the United Nations Charter, the International Covenant on Civil and Political Rights, and the Inter-American Convention on Human Rights, which are laws of the Republic in accordance with article 5, paragraph 2, of the Constitution" (decision of the Santiago Court of Appeal of 7 April 1993, upheld by the Supreme Court judgement of 7 September 1993).

64. This exemplary trial shows that, although discrimination is not explicitly characterized as an offence in Chilean criminal law, it is punishable under the international treaties in force in the country which are the basis for the above-mentioned decision, and that no one may be discriminated against because of his race, colour, ethnic group, origin or any other such reason, as stated in the Convention.

## B. Peruvian immigration

65. The flow of migrant Peruvian workers into Chile has been increasing in the last five years. They come to look for work, with the aim of saving money

and then going back to their country. Many women work as domestic employees in private homes, the men do manual labour, and there is a smaller number of professionals and businessmen.

66. Various migrants' associations have been organized, some supported by the Embassy of Peru in Chile and others composed of migrants and political refugees. 35/

### 1. Immigration flows

67. According to the 1992 census, there were 7,649 legal Peruvian residents. The 1995 Mezzano study gives a figure of 17,677 based on tourism statistics for 1992-1995. Account also has to be taken of the immigration of illegal workers, estimated at 12,000 for Santiago and 13,482 for the city of Arica on the border with Peru. If we add the persons counted in the 1992 census, plus the tourism statistics for 1992-1995 and the estimated number of illegal immigrants in the past few years, we reach a total of 50,808 Peruvian immigrants. All the official and university studies indicate that there is an upward trend in the number of legal and illegal Peruvian immigrants.

68. It is calculated that 40 per cent of the domestic female employees in Arica are of Peruvian origin. They are all in the country legally, under the agreement between Tacna and Arica, but work illegally, since they enter Chile with a safe conduct that allows them to stay in the country for seven days but not to work. Many of them spend the week working in Arica, go back to Peru on weekends and then return the following Monday. Some people (men and women) also work as street vendors or in markets.

69. In Santiago, however, a person is either in the country legally with an employment contract or is present illegally in terms of residence or employment situation. The possibility of extending one's stay legally as in Arica does not exist. With an employment contract, a Peruvian citizen in Santiago may apply for a temporary visa and, after two years, a permanent visa. In Arica, the Government restricts the number of visas subject to employment contract. There are, however, special work permit rules for Peruvian citizens. For the occupations in question and special permits, it must be certified that there is no Chilean who is interested in or who can do such work. To this end, the employer has to place an advertisement for the job in the newspaper three times and, if there is no Chilean who applies or meets the requirements, a Peruvian citizen can be hired. A temporary visa may be requested on the basis of the contract. After two years with a temporary visa, a permanent residence visa may be applied for, provided that the person continues to be employed by the same enterprise or employer.

### 2. Nature of immigration

70. Peruvian immigration is not permanent, but temporary or seasonal. Most of the migrant workers want to return to their country after they have saved money. Such immigration is more on an individual than a group basis, and takes place on a large scale. It is direct and selective, with very marked age, socio-economic and educational variables. Most migrants are unskilled workers.

71. Peruvian immigration is labour immigration, primarily by wage earners whose integration in Chile would appear to depend on demand and the labour market situation. There is a small proportion of professionals and businessmen.

### 3. Aspects of discrimination

72. There are two different situations: the situation in the border region particularly in Arica, and the general situation of Peruvian migrant workers in the rest of the country. In Arica, the situation is very complex because of the Peruvian population's constant mobility. It is estimated that 10,000 persons enter and leave Chile and constitute a floating population which has no intention of integrating further. Peruvians in Santiago, have various opinions about discrimination. 36/ They all agree that "Peruvians with indigenous features are the ones who feel discriminated against, not the whites." The former are told that they are "taking work away from Chileans" and are called "cholos" or "indios" ("half-breeds" or "Indians"). They sometimes feel that people look down on them in the street. "There are a lot of gibes, but only for people who have indigenous features."

73. Since racial discrimination is largely rejected in Chile, as seen in the surveys referred to in this report, the situation with regard to relations with migrant workers in Chile is ambiguous.

## SECOND PART

## INFORMATION RELATING TO THE IMPLEMENTATION OF THE ARTICLES OF THE CONVENTION

74. During the period covered by this report, there have been a number of developments and measures relating to various articles of the Convention. These are described as required in the Committee's guidelines. 37/

### Article 2

75. In connection with article 2 of the Convention, reference may be made to the adoption of the Indigenous Act, article 1 of which states "It is the duty of society in general and of the State in particular, through its institutions, to respect, protect and promote the development of the indigenous inhabitants, and their cultures, families and communities, adopting appropriate measures for these purposes." The first part of this report explains in detail what the implementation of this legislation has meant for the indigenous peoples in this country in social, economic, cultural and other terms by ensuring their adequate development and protection for the purpose of guaranteeing them for full and equal enjoyment of human rights and fundamental freedoms, as provided for in article 2, paragraph 2, of the Convention.

76. Through the new Indigenous Act, Chilean legislation for the first time contains a specific article which characterizes the offence of racial discrimination, makes it punishable and provides for the applicable penalties. The article reads: "Manifest and intentional discrimination against indigenous persons on the grounds of their origin and culture shall be deemed

an offence. Anyone who engages in such conduct shall be liable to a fine equivalent to one to five times the minimum monthly wage" (Act No. 19,253, art. 8). There have been no reports of proceedings instituted on the basis of this article.

77. A conciliation lawyer was appointed on 20 April 1994 and the system established by the Indigenous Act for the settlement of indigenous disputes came into operation. Its success may be gauged by the figures for activities during its first and subsequent years of operation. In 1994, 467 cases were filed and 243 were heard, of which 77 were settled and 92 were closed or dismissed. Of the 77 cases, 17 were settled on the spot. The results are obvious because, within seven months, 77 disputes have been settled; in legal terms, this means that 77 proceedings have been avoided and a rapid and effective solution has been found. 38/ Consideration of the conciliation rulings shows that this new legal provision is effective and that, by taking account of the will of the parties, custom and the wisdom of justice and benefiting from technical support by topographers and other specialists, it has given indigenous peoples improved access to the courts and has contributed to peace.

## Article 6

78. In connection with article 6, a judgement was handed down in a case of racial discrimination against an immigrant from the Republic of Korea. As explained earlier in this report in the analysis of various aspects of Korean immigration, when a health centre refused to allow a Korean woman immigrant to enter a public place in the city of Santiago, she instituted proceedings in the Chilean courts, thereby arousing great public interest. The higher courts determined that the woman had been prevented from entering the establishment because of her racial origin and ordered the owner of the centre to pay a large amount of money as a fine to compensate her for the injury she had suffered as a result of such discrimination. This action by the courts also has a bearing on compliance with article 5 (f) of the Convention.

## Article 7

79. With regard to article 7 of the Convention, attention is drawn to the provisions of the 1997 educational reform amending the educational guidelines for public and private schools throughout the country and including in the curriculum cross-cultural subjects such as knowledge of human rights and their implementation and respect for ethnic and social diversity, multiculturalism and tolerance. These subjects have a direct bearing on the provisions of article 7 of the Convention. In connection with tolerance, the reform refers to "respect and esteem for ideas and beliefs different from one's own, and recognition of dialogue as a constant source of humanization and as a means of overcoming differences and getting closer to the truth". Another objective is: "To recognize, respect and defend the equal basic rights of all persons, without distinction as to sex, age, physical condition, ethnic origin, religion or economic status." 39/

## Declaration on the competence of the Committee

80. During the period covered by this report, Chile made the declaration on competence provided for in article 14, paragraph 1, of the Convention. At the session at which it considered Chile's preceding report, the Committee asked for the Chilean delegation's opinion on this matter and the delegation responded positively, stating that it would take the necessary steps in respect of the declaration; it did so a few months later.

## Notes

1/ This subject was dealt with at length in paragraphs 1 to 57 of the tenth periodic report submitted by Chile on 15 January 1992 (CERD/C/196/Add.1). The historical analysis contained in that report will not be repeated in this report.

2/ In this report the same concept as in the Convention will be used: "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life", International Convention on the Elimination of All Forms of Racial Discrimination (henceforth referred to as the Convention), article 1, paragraph 1.

3/ In this report we shall use the term "indigenous peoples" or "indigenous populations" indiscriminately, without thereby adopting a definite stance on the controversy which exists on these questions at the international level. In addition, as in national legislation, the terms "ethnic group", "indigenous people" or "indigenous group" are synonymous.

4/ The actual name in the Mapuche language (Mapundugun) is Mapu, which means land and those who inhabit it: in other words, the people of the land or the place in question. The Spaniards, from the time of the poet Ercilla, who wrote "La Araucana" - an epic poem about the Mapuche people, gave them the generic name of Araucanians.

5/ As is well known, some members of the Mapuche people live on the eastern slopes of the Andes in Argentina; they are known as the "Puelches" or people of Puel Mapu, the land to the east. The so-called "Picunches", or people of the north, bore the brunt of the conquest and colonization, and either disappeared or were absorbed in the miscegenation with the Spanish population.

6/ During the nineteenth century, the indigenous inhabitants continued to be independent, travelling to the Argentine side, to the famous pampas, trading cattle and horses, selling them at markets in Chilean towns and maintaining their customs. They were a people who had no central government but whose various communities were headed by "caciques" or chiefs.

They would meet to carry out joint activities, but each group was independent in its own right. They gradually established themselves in farming activities and constituted a prosperous society.

7/ These migrants generally travelled to Latin America with passports or travel authorizations issued by the former Turkish Empire, which is why they are popularly known as "Turks" and not precisely designated by their national origin. Although this term is pejorative and may be used so as to cause offence, it does not give rise to overt racial discrimination and there have been no racist acts during recent decades. Descendants of these immigrants today hold senior positions in banks, commerce, industry and public administration.

8/ There are, however, studies which show that under 20 per cent of the population feel prejudice towards this social group, although this has not manifested itself in racist acts. See "First survey of intolerance and discrimination" below.

9/ "First survey of intolerance and discrimination. Report and analysis", Fundación Ideas and Department of Sociology of the University of Chile, Santiago, December 1996.

10/ The question required a response to the following statement: "Chile is a more advanced country than other countries because there are no Negroes here." Approximately 13.1 per cent agreed largely or completely; approximately 8.3 per cent agreed to a certain extent; approximately 11.2 per cent disagreed to a certain extent; and 67.4 per cent disagreed sharply or completely. This demonstrates a majority awareness concerning a question which has traditionally been treated in racial terms in education in Chile.

11/ Millaray Cristina Llanquileo, "Cultural identity in modernization processes. An analysis of changes in the names of Mapuche subjects, 1970-1990", Proposiciones, No. 27, pp. 148-160, Santiago, October 1996.

12/ The author of the article is herself Mapuche.

13/ Op. cit., p. 54.

14/ No trend is apparent since there are some years in which the number of name changes has declined in relation to previous decades and other years in which there are applications. A longer period will have to be taken into account in order to ascertain whether the legal measures of recognition of the indigenous ethnic groups have had positive effects in this respect.

15/ In the above-mentioned University of Chile study on intolerance and discrimination, a scale or "Table of assessment of discrimination and intolerance" has been established ranging from about 20.7 per cent of intolerance to about 60.2 per cent. The highest level of intolerance in society is shown for homosexuality with 60.2 per cent, while the lowest is for disability with 20.7 per cent. Ethnic discrimination emerges in fifteenth position out of 17, which is very low, with 23.6 per cent of intolerance or discrimination.

16/ Population and housing census, Chile, 1992. This was the sixteenth national population census and the fifth housing census, and was carried out on 22 April 1992, recording all persons in the place "where they spent the night".

17/ The definition is as follows: "Human settlements (entities) are socio-spatial units contained within territorial units (localities). The settlement implies a process of occupation, organization, equipment and use of territory, adapting it to the needs of the population." The census form established for rural areas the definition of "track", "locality" and "entity", the latter being the most precise and the smallest. "In short, the territorial area with its own name defines the locality, in terms of the types of settlement contained in the locality, and the entity." Population and housing census, Chile, 1992, General results, p. 17, National Institute of Statistics.

18/ The question was as follows: "If you are Chilean, do you regard yourself as belonging to one of the following cultures? Mapuche, Aymara, Rapa Nui or none of the foregoing." It was designed to establish both the ethnic origin and the sense of membership of a particular ethnic group. Both conditions had to exist simultaneously for the objective to be achieved. Nevertheless, it is likely that some persons - without having the ethnic origin in question - stated that they belonged to an ethnic group and that others, who did originate from an ethnic group, stated that they did not belong to it. Population and housing census, General results, p. 34. There are various studies based on the census data which generally corroborate the data obtained: José Bengoa and Alejandro Sabaj, "The Mapuche communities and localities in Chile", National Institute of Statistics and Ediciones Sur, Santiago, 1997. Marcos Valdés, "Notes on the Mapuche population of the Metropolitan Region" in Pentukún, No. 5, publication of the Indigenous Studies Institute of the Universidad de la Frontera, 1996. Rodrigo Valenzuela, "The indigenous population in the Metropolitan Region", CONADI, Santiago, December 1995.

19/ Several studies have been carried out to establish the reliability of the census data in this area. Analyses using "Redatam" methods elicit very precise information concerning the characteristics of the persons who have identified themselves as indigenous. Although in the case of the Aymaras and Rapa Nuis, there may have been "over-declaration", which in quantitative terms is not very significant in relation to the total, in the case of the Mapuches there would appear, in some urban cases, to have been "under-declaration". In any event, the analysis covering Santiago communes, the type of activities of the self-declared indigenous persons and other characteristics of this type validate the reliability of the census data. See José Bengoa, "El pais del censo", Mensaje, Santiago, October 1993; Marcos Valdés, "Notes on the Mapuche population of the Metropolitan Region", Pentukún, No. 5, Indigenous Studies Institute, Universidad de la Frontera, Temuco, October 1996.

20/ "The Mapuche communities and localities in Chile", National Institute of Statistics and Ediciones Sur, 1997.

21/ Mention should also be made of the importance of the appreciation of "indigenous lands" as an integral part of their culture. These provisions have made it possible to transfer land to indigenous communities and have also introduced a strong element of protection vis-à-vis infrastructure projects affecting land inhabited by indigenous persons.

22/ Article 54. "Custom adduced in proceedings between indigenous members of the same ethnic group shall constitute law, provided it is not incompatible with the Constitution. In criminal matters, it shall be considered when this may provide information relevant to the application of exemption from responsibility or an extenuating circumstance."

23/ Article 54. "The judge ... on the application of an interested party ... shall accept the use of the mother tongue and shall for this purpose receive the assistance of a qualified interpreter ...".

24/ Article 55. "In order to prevent or terminate a lawsuit concerning land in which an indigenous person is involved, the parties concerned may voluntarily request the Corporation to instruct them about the nature of conciliation and their rights, and to arrive at an extrajudicial solution to the dispute. The conciliation procedure shall be completely informal." (This clause is very important since it enables the act of conciliation to take place in the actual indigenous community; there is no need for recourse to an urban court.) This article provides for the appointment of a conciliation lawyer and a public authenticating officer, and provides that: "The latter shall prepare a record of the agreement, which shall have the effect of res judicata at final instance and shall be enforceable." The dispute in which a conciliation agreement was reached will become res judicata and, since it is "enforceable", it may be put into effect by the police if necessary. The article concludes with a situation in which no agreement is reached: "If no agreement is reached, the corresponding judicial proceedings may be initiated or the proceedings may be continued as appropriate." It should be noted that this "conciliation" provision is completely new in Chilean judicial procedure and is intended to overcome a situation in which many indigenous inhabitants are involved in land disputes in which they have to spend large sums of money, both in the courts and on fees for unscrupulous lawyers.

25/ Articles 56-59 of the Act, which are intended to reduce the excessive time and procedures to which indigenous persons have traditionally been subjected, in particular in land matters. This problem arises both in Chile and in many other Latin American countries.

26/ Ministry of National Planning, "Monitoring of the Ninth Region indigenous scholarship programme", March 1996.

27/ Ibid., p. 2.

28/ "The Mapuche communities and localities in Chile", National Institute of Statistics, 1997.

29/ Ministry of Planning, "Monitoring of water supply projects for dwellings in rural areas with scattered indigenous populations", October 1995. This was one of the priority programmes of the Ad Hoc Commission on Indigenous Peoples.

30/ Three years after the equipment was installed, 86 per cent of the participants in the programme, especially women, say that their housework is much easier and that the health of their families has improved. Ibid., p. 28.

31/ Child-care programme for indigenous communities, National Nursery Schools Board (JUNJI), 1995.

32/ We have included this dimension in the report on racial discrimination for the first time because of the large scale of recent immigration.

33/ The media have shown particular interest in the situation of migrant workers from Peru because this is a new feature of Chilean social and working life.

34/ All this information was provided by Professor Astrid Stoehrel of the University Academy of Christian Humanism, who heads the Fondecyt project entitled "Migration of Koreans, Peruvians and Germans to Chile", Fondecyt, 1997.

35/ A meeting with representatives of Peruvian organizations was held for the purpose of this report.

36/ A meeting with Peruvian residents who are members of Peruvian organizations in Santiago was held in connection with this study.

37/ Where an article is not mentioned, there have been no legislative or other developments calling for comment.

38/ Carlos Vargas Tapia, conciliation lawyer, "La conciliación en nuestro ordenamiento jurídico y en la nueva legislación indígena", CONADI, Temuco, 1995.

39/ Ministry of Education, "Objetivos fundamentales y contenidos mínimos obligatorios de la educación básica chilena", Santiago, January 1996.

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